

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

AKAL SECURITY, INC.

and

Cases 19-CA-30891  
19-CA-30892  
19-CA-30950

UNITED GOVERNMENT SECURITY  
OFFICERS OF AMERICA, LOCAL 118

Ryan Connolly, Peter Finch, Attys., Counsel for the General Counsel,  
Region 19, Seattle, Washington.  
Patrick Scully, Emily Keimig, Attys., Sherman and Howard,  
Counsel for Respondent, Denver, Colorado.  
John A. Tucker, Atty., John A. Tucker Co., L.P.A.,  
Charging Party, Akron, Ohio.

**DECISION**

I. Statement of the Case

Lana H. Parke, Administrative Law Judge. This matter was tried in Coeur d' Alene, Idaho on May 13 and 14, 2008 upon Orders Further Consolidating Cases, Notice of Hearing, and Amendment to Consolidated Complaint issued on January 31, 2008 by the Regional Director of Region 19 (the Regional Director) of the National Labor Relations Board (the Board), which consolidated for hearing Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 19-CA-30891 and 19-CA-30892 (issued on December 28) and Cases 19-CA-30950 and 19-RD-3769.<sup>1</sup> The Complaint, based upon charges filed by the United Government Security Officers Of America, Local 118 (the Union) alleges Akal Security, Inc. (the Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act). Respondent essentially denied all allegations of unlawful conduct.

II. Issues

1. Did the Respondent violate Section 8(a)(1) of the Act by terminating employees Lee Ryan and Stephen Winther from their positions as security officers at the United States District Court for Idaho located in Coeur d' Alene, Idaho because they engaged in protected concerted activity and/or to discourage other employees from engaging in protected concerted activity?

---

<sup>1</sup> The unfair labor practice pleadings are collectively referred to herein as "the Complaint." By order dated May 12, 2008, the Regional Director severed Case 19-RD-3769 from the Complaint and approved the Union's request to proceed in that matter.

2. Did the Respondent violate Section 8(a)(1) of the Act by threatening employees with discharge or discipline if they spoke to an agent of the Board and by directing employees not to speak to anyone regarding discharges of employees?

5

### III. Jurisdiction

10

15

At all relevant times, the Respondent, a New Mexico corporation with offices and places of business in Boise, Idaho and in the United States District Court for Idaho located in Coeur d'Alene, Idaho (the Courthouse), has been engaged in the business of providing uniformed security personnel to the United States Marshals Service (the USMS).<sup>2</sup> During the representative 12-month period preceding December 28, 2007,<sup>3</sup> in the course and conduct of its business operations, the Respondent performed services valued in excess of \$50,000 in States other than the State of Idaho. Respondent admits, and I find, the Respondent has at all relevant times been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union has at all relevant times been a labor organization within the meaning of Section 2(5) of the Act.

### IV. Findings of Fact<sup>4</sup>

20

#### A. Authority of Denny Scieszinski

25

30

Since October 1, 2000, the Respondent has contracted with the USMS to provide security services to federal courthouses throughout the jurisdiction of the Ninth Circuit Court of Appeals, including the Courthouse (the USMS Security Contract). Kevin George Mathews (Mr. Mathews) stationed in Boise, Idaho, is the Respondent's site supervisor for the District of Idaho. Mr. Mathews manages the Respondent's employees at all five Idaho federal courthouses and visits the Courthouse monthly. The USMS provides credentials for Court Security Officers (CSOs), without which CSOs cannot be employed in federal courthouses. Successive collective-bargaining agreements between the Union and the Respondent (collectively effective 2002 to 2010 and herein called the Bargaining Agreements) have provided that the grievance procedures contained therein shall not be utilized to grieve any employee removal order of the USMS or any USMS revocation of CSO credentials.

35

During the period relevant to the Complaint, the Respondent employed the following CSOs at the Courthouse:

40

Denny Scieszinski (Officer Scieszinski)  
 Lee Matthew Ryan (Officer Ryan)—employed at the Courthouse since 1994  
 Stephen G. Winther (Officer Winther)—employed at the Courthouse since 1999  
 Curtis Exley (Officer Exley)  
 Dan Schierman (Officer Schierman)  
 Bill Lopez (Officer Lopez)  
 Bob Guzman (Officer Guzman)

45

<sup>2</sup> The USMS is exempt from the Board's jurisdiction under the provisions of Section 2(2) of the Act, which states: "The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof..."

50

<sup>3</sup> All dates herein are 2007 unless otherwise specified.

<sup>4</sup> Unless otherwise explained, findings of fact herein are based on party admissions, stipulations, and uncontroverted testimony.

At all times relevant, Officer Scieszinski served as Lead CSO. The Bargaining Agreement includes the Lead CSO in the CSO bargaining unit and prohibits the Lead CSO from performing supervisory duties. The USMS Security Contract requires the lead CSO to assume, in pertinent part, the following duties: provide direct supervision to all CSOs; assure all posts are covered as directed by the Government; assure all CSOs are present and in proper uniform; determine any changes that may be required in the daily routine.

As lead CSO during the relevant period, Officer Scieszinski had no authority to discipline employees. In about June 2006, Officer Exley submitted an application for employment to Officer Scieszinski who thereafter notified Officer Exley that he was hired.<sup>5</sup> Officer Scieszinski scheduled the CSOs' work shifts, assigning them to the following duty posts or moving them to specific locations in the Courthouse as courthouse schedules or circumstances dictated:

Post 1—comprising (1) the Courthouse entryway, where CSOs operate an X-ray and magnetometer machine; (2) a small windowed control room, containing a monitor and permitting full view of and communication with persons in the entryway.

Post 2—comprising the second floor of the Courthouse where the courtroom is located.

Posts 3 and 5—comprising rover positions, responsive to any area where additional manpower is needed.

In the event of "high profile" cases<sup>6</sup> or criminal trials, Officer Scieszinski might reassign CSOs to courthouse locations where courthouse-visitor activity or prisoner/jury contact could be closely monitored. When overtime work was required for which no employee volunteered, Officer Scieszinski selected overtime candidates.<sup>7</sup> Officer Scieszinski granted and denied employee requests for time off and held CSO meetings in the control room at Post 1 to discuss work issues and to disseminate information received from Boise management. Officer Scieszinski assigned Officer Ryan to oversee new-employee training of Officer Lopez. Except for the occasions of Mr. Mathews' monthly visits, Officer Scieszinski was the only person in charge of the Respondent's employees at the Courthouse.

#### B. Terminations of Stephen G. Winther and Lee Matthew Ryan

In July 2005, the Respondent hired Officer Lopez to work at the Courthouse. Over the ensuing 18 months, Officers Winther and Ryan observed Officer Lopez' work with increasing concern. They felt Officer Lopez jeopardized his and others' safety by, among other things, letting courthouse visitors get close enough to him to be able to seize his weapon, failing to attend carefully to items coming through the X-ray machine or to individuals coming through the magnetometer, being easily diverted, letting unauthorized persons enter through the back door without screening, and directing visitors with immoderate gestures that distracted both security personnel and visitors and posed safety risks. Officer Ryan also allegedly noted two instances of Officer Lopez sleeping while on duty at Post 2. Officers Winther and Ryan repeatedly reported their concerns to Officer Scieszinski and discussed them with Officers Exley and

<sup>5</sup> There is no direct evidence that Officer Scieszinski effected Officer Exley's employment; he later told Officer Exley that if he did not like an employment candidate, the candidate would not be employed at the Courthouse.

<sup>6</sup> A high profile case draws numerous family members and/or spectators to the Court.

<sup>7</sup> Disputes concerning overtime assignments could be brought to the attention of Mr. Mathews for resolution.

Schierman, who shared many of them. According to Officer Ryan, Officer Scieszinski told him not to burden Mr. Mathews with the problem, saying he would handle it. To Officers Winther and Ryan's observations, however, the problems continued.<sup>8</sup>

At some point, Officer Scieszinski told the CSOs, excepting Officer Lopez, that he needed documentation of incidents Officer Lopez was involved in and requested them to fill out "210s" on Officer Lopez. A "210" refers to the USMS Form-210, entitled "Field Report," which Courthouse employees use to report onsite incidents (210-report) and which are submitted to the U.S. Marshals Service.<sup>9</sup> In a conversation occurring in early February, Officer Scieszinski told Officers Winther and Ryan they needed to talk to Officer Lopez and then write their complaints on a 210-Report.<sup>10</sup> Officer Winther asked Officers Exley and Schierman if they thought it was a good idea to meet with Officer Lopez because "everybody was complaining about him within the ranks on a daily basis, and [Officer Scieszinski] had told us to go talk to him." Officers Exley and Schierman agreed to meet with Officer Lopez.<sup>11</sup>

On the morning of February 6 or 7, Officers Winther and Ryan arranged a meeting among themselves and other CSOs for the purpose of confronting Officer Lopez about his job performance.<sup>12</sup> No Courthouse activity was scheduled for that day, which meant minimal visitors to the Courthouse. When Officer Lopez arrived at work later that morning, Officer Winther asked him to join his fellow officers at Post 1, as they wanted to talk to him. Officer Lopez agreed, meeting with Officers Winther, Ryan, and Schierman in the control room at Post 1 commencing sometime between 8:15 and 8:30 a.m. (the Lopez Meeting).<sup>13</sup> At the time of the meeting, Officers Ryan, Exley, and Schierman were assigned to Post 1, Officer Lopez to Post 2, and Officer Winther to Post 3, a rover position.

At the Lopez Meeting, Officers Winther, Ryan, and Schierman told Officer Lopez that his coworkers had complaints about his work, that he needed to get up to speed, that his job performance was lacking, and that he needed a better grasp of his duties. The men told Officer Lopez they hoped to help him improve and were there to offer assistance. Officer Ryan said

---

<sup>8</sup> The recounting of Officers Winther and Ryan's concerns about Officer Lopez' job performance does not constitute any finding that Officer Lopez was, in fact, derelict in any of his job duties. Such a finding is unnecessary to the issues herein, and in any event the evidence establishes only the sincerity of, not the actuality of, Officers Winther and Ryan's beliefs.

<sup>9</sup> It is unclear when Officer Scieszinski requested 210-reports. Officer Winther places the request as shortly before February 6. Officer Exley testified Officer Scieszinski made the request on two occasions around the end of 2006 or the first of 2007 to him and Officer Ryan and to Officer Winther or Officer Schierman.

<sup>10</sup> Officer Scieszinski did not testify about events relating to the Lopez Meeting, and the testimony of Officers Winther and Ryan is uncontroverted. The evidence supports a finding that Officer Scieszinski suggested Officers Winther and Ryan "talk" to Officer Lopez about their concerns; the evidence does not demonstrate that he authorized any work time CSO meeting with Officer Lopez.

<sup>11</sup> In a later written statement provided to the Respondent, detailed below, Officer Exley stated he had not been "previously informed of the meeting." Officer Exley's statement does not preclude his having been consulted about a potential meeting, and I credit Officer Winther's testimony that Officer Exley agreed to meet with Officer Lopez.

<sup>12</sup> Some CSOs place this meeting on February 6. According to the Respondent, post records and sign-in sheets show the meeting most likely occurred on February 7. It is unnecessary to establish the exact date.

<sup>13</sup> Officer Exley joined the meeting a few minutes before it ended.

that Officer Scieszinski had indicated he wanted to fire Officer Lopez. At about 9:00 a.m., Officer Winther left the Lopez Meeting, as Officer Exley joined it. Officer Ryan summarized the discussion for Officer Exley's benefit, and Officer Exley said he had already discussed his safety concerns with Officer Lopez. Officer Ryan told Officer Lopez the CSOs would try to get back  
 5 together with him in about 30 days to review with him and see if there had been any improvement. Officer Lopez said that if he couldn't do the job, perhaps he should just quit; he also expressed appreciation for the Officers' comments and said he would try to do better.<sup>14</sup>

In the weeks following, Officers Winther and Ryan saw no improvement in Officer Lopez' performance. On March 25, Officer Winther submitted a 210-report to Officer Scieszinski regarding Officer Lopez' "Inability to Perform CSP Duties," (Officer Winther's 210-report). The narrative portion of Officer Winther's 210-report stated, in pertinent part, "The purpose of this report is to begin documenting continuing incidents of Wm. Lopez' inability to perform officer  
 10 duties. Lopez has had difficulty grasping the duties of officer work since he began 2 years ago. Lopez has been continually instructed by other Officers including myself with less than satisfactory results." Officer Winther listed 14 specific examples of what he considered to be Officer Lopez' unprofessional and safety-compromising behavior, including standing too close to visitors, inability to remember faces and names, making distracting gestures, failure to read the events list or understand the scheduling process, and uncertainty in making simple decisions.  
 15

On March 26, Officer Ryan signed a 210-report regarding "Observation of Officer Bill Lopez" (Officer Ryan's 210-report).<sup>15</sup> The narrative portion of the 210-report summarized Officer Ryan's earlier expressed criticism of Officer Lopez and stated:  
 20

On 2/6/07 all Officers talked with Bill as a group to attempt to help him better understand the scope of the job and bring him up to speed. The following issues were discussed with Bill: 1. Unprofessional demeanor dealing with Court family, attorneys and the public. 2. He does not follow officer safety procedures at Post 1, Main entry screening area. 3. Use of foul language, has been told numerous  
 25 times to refrain from using bad language. 4. Late to arrive on post, states he forgets where he is to be assigned. 5. He continually asks the same questions day after day about courtroom activity, prisoner movement. He is unable to remember the names of Federal Judges and the names of staff members. 6. Officer Lopez will not assume the responsibility of the Control Room he will stand in the doorway for 1 hour instead of assuming the responsibility. 7. When  
 30 the Officer gives a briefing on activities around the courthouse Officer Lopez will burst out in laughter then look at other Officer's and stop.  
 35

---

<sup>14</sup> In its post-hearing brief, the Respondent asserts that Officer Ryan admitted he called the Lopez meeting because he wanted Officer Lopez fired. The record does not reflect any such admission. Officer Ryan testified that in his April meeting with Mr. Mathews, he told  
 45 Mr. Mathews, "[Officer Lopez] needs to be fired if he's going to continue to jeopardize the other employees and personnel in this courthouse. He's a safety hazard. He's going to get us in a shooting, and I don't want to work with him. He needs to either pick up the pace or get fired." Officer Ryan's testimony does not justify the inference the Respondent apparently asks me to draw.

<sup>15</sup> Officer Ryan had given this report in "rough" a week earlier to Officer Scieszinski who thereafter typed it in final for Officer Ryan's signature because the report needed to be submitted to Mr. Mathews immediately.  
 50

Officer Ryan's 210-report concluded, in pertinent part, "In my opinion, if a hostile situation were to develop at Post 1, I strongly doubt Officer Lopez will have the presence of mind or the ability to react in a timely manner."

5 On April 6, Officer Exley submitted to Officer Scieszinski a 210-report describing allegedly unsafe procedures practiced by Officer Lopez on March 26 at Post 1. On April 9, Officer Schierman submitted to Officer Scieszinski a 210-report describing the Lopez Meeting and detailing additional complaints about Officer Lopez relating to use of profanity and perceived memory problems.

10 On April 12, Officer Winther submitted a continuation of his March 25 210-report to Officer Scieszinski, which read in pertinent part, "The purpose of this report is to continue to document CSO Lopez's inability to remember and or retain information pertaining to his duties as an Officer at the Coeur D'Alene Federal Courthouse." Officer Winther detailed an April 12  
15 incident in which he allegedly observed Officer Lopez fail to recognize the District of Idaho District Attorney who had been a frequent visitor to the Courthouse during Officer Lopez' employment.

20 Sometime prior to April 19, Mr. Mathews reviewed the 210-reports of Officers Winther, Ryan, Exley, and Schierman. On April 19, Mr. Mathews visited the Courthouse and separately interviewed each complainant as well as Officer Lopez. Meeting with Officer Winther, Mr. Mathews told Officer Winther he was disappointed that he had held the Lopez meeting. Mr. Mathews asked who had authorized the meeting. Officer Winther said he did not know; he explained that when the CSOs complained about Officer Lopez to Officer Scieszinski, he told  
25 them to talk to Officer Lopez about his performance. Officer Winther told Mr. Mathews the CSOs had held the meeting with the good intention of helping Officer Lopez. Mr. Mathews said it was not the CSOs' job to evaluate Officer Lopez' performance. Officer Winther disagreed, saying that when it came to CSO safety issues, CSOs should have a say in another CSO's performance.

30 Meeting with Officer Ryan, Mr. Mathews told him that his 210-report was "way out there" compared to the others and that he was out of line. Mr. Mathews said if he were to send anybody home, it would be Officer Ryan, not Bill Lopez. Officer Ryan said he thought the investigation was about Officer Lopez and his inability to do the job and asked how it had  
35 suddenly focused on him. Mr. Mathews said, "There's procedural and conduct standards that you violated." Officer Ryan complained that Officer Lopez was a walking hazard to the other CSOs.

40 After interviewing the CSOs on April 19, Mr. Mathews told Larry Homenick, the Respondent's Contract Manager, what he had learned, advising him there appeared to be violations of CSO performance standards that would have to be investigated, and of which the USMS would have to be informed under the terms of the USMS Security Contract. Thereafter, Mr. Mathews "briefed" Deputy Dave Meyer of the USMS Judicial Security Division on the situation. No evidence was provided as to what information or details Mr. Mathews  
45 communicated to the USMS Judicial Security Division, but it is reasonable to infer from the following April 25 USMS letter that Mr. Mathews told Deputy Meyer the circumstances of the Lopez Meeting.

50 By letter dated April 25, the Judicial Security Division of the USMS wrote to the Respondent, in pertinent part, as follows:

The Government is in receipt of a report of the allegedly inappropriate conduct of your employees: CSOs Ryan, Winther, Schierman, and Exley...Allegedly, the four CSOs have conspired to harass a fellow CSO, Bill Lopez...Under the terms of the contract, your employees are required to meet the performance standards as set forth in the CSO Standards of Performance. In accordance with...the contract, *Removal of CSOs and Other Contractor Personnel*, you are requested to investigate the alleged actions, and report the results of the investigation to the contracting officer. Please provide your report within five business days of the date of this letter. Your findings should include any disciplinary action taken, should such be warranted.

By memoranda dated April 26, Mr. Mathew notified Officers Winther, Ryan, Schierman, and Exley that he would meet with them on April 30 to discuss alleged violations of the following sections of the Respondent's Performance Standards, as stated:

- #17 Not discriminate against [or sexually harass members of the public, the judiciary, other employees] or engage in any prohibited personnel practice.
- #38 Refrain from neglecting duties...
- #39 Refrain from use of abusive or offensive language...
- #43 Follow employer's chain of command procedures on all work related issues.

On April 30 Mr. Mathews met with Officer Lopez, who submitted a written "Employee Statement" in which he denied dereliction of duty and described the Lopez Meeting, in pertinent part, as follows:

[Officer Ryan] said they were having this meeting without [Officer Scieszinski] or any other supervisor being present because they were helping me and they did not tell [Officer Scieszinski] of this meeting. The meeting covered their idea of how I was supposed to perform my duties according to them, and [Officer Winther] said that I did the job opposite of how they did it and that I was doing it wrong. I was talked down to and basically scolded by the individuals of the group. The meeting made me feel harassed and mistreated. I felt that the method used was very degrading to me and shameful on them in working around [Officer Scieszinski]. He never treated me like the group did...I took this job to help the Federal Court to be safe not to be harassed and treated like a second class citizen by my fellow security officer[s].

Mr. Mathews also met separately with Officers Winther, Ryan, Schierman, Exley, and Scieszinski, obtaining written statements from them. Officer Schierman's statement included his opinion: "I felt [Officers Winther and Ryan] were gruff and threatening in manner while talking to [Officer Lopez]."<sup>16</sup> Officer Exley's statement described the Lopez Meeting, in pertinent part, as follows:

I was not previously informed of the meeting [which] lasted approximately 3-5 minutes after I arrived...CSO Ryan, Winther, Schierman and Lopez were present. CSO Ryan informed me that they had met with CSO Lopez regarding his work performance, had discussed all issues with him and would revisit the issues in 30 or so days. CSO Ryan advised he called the meeting as the Union President to

---

<sup>16</sup> Called as a rebuttal witness by the General Counsel, Officer Schierman was not questioned about the Lopez Meeting. I find his unsworn, out-of-court opinion of Officers Winther and Ryan's "gruff and threatening" manner to be too subjective to be accorded any weight.

assist CSO Lopez in realizing what issues were at hand and how we could assist in helping him change or learn.<sup>17</sup> CSO Lopez didn't have any rebuttal except to say that he would try to change.

During Mr. Mathews' meeting with Officer Ryan, Officer Ryan told Mr. Mathews that sometime in the previous six-month period, Officer Scieszinski had agreed with Officer Ryan that Officer Lopez did not practice good officer safety conduct and had said the CSOs needed to "get together with [Officer Lopez] and try to get him on board." Mr. Mathews declined to believe Officer Ryan.

On May 2, Mr. Mathews submitted a ten-page investigative report to the USMS, detailing the information gathered and stating, in pertinent part:

Summary: On 5/02/07, this investigation concluded the allegation that CSOs Ryan, Winther and Schierman engaged in a prohibited activity, an unauthorized meeting to critique the job performance of [Officer Lopez], thereby creating a hostile work place, was SUSTAINED. (Performance Standard #17)

....

The investigation has shown that clearly CSO Lopez was the victim of harassment in the work place. He had become compliant with his attackers I what he (Lopez) felt was the only way to get along, even to the point of thanking those who had taken advantage of him. It is believed that he (Lopez) was not a willing participant in the meeting, but the object of the meeting.

Conclusion:

....

The tone of the [Lopez Meeting] was at least uncomfortable for CSO Lopez. There is a suggestion that it may have also been threatening...As a result I believe that CSO Lopez has been the subject of a hostile work place having been created by the meeting in question...Given that the meeting in question was held at Security Post #1, during operational hours, for a period of 30 minutes, I have concluded there was a complete breakdown of security during this period of time.

By letter dated May 7, the Respondent proposed the following CSO disciplinary actions to the USMS:

Officer Exley and Schierman: one-day and three-day suspensions, respectively, along with a warning that future substantiated violations of the CSO Performance Standards, post orders, or Akal or USMD policies would result in additional disciplinary action.

Officer Winther: seven-day suspension, a warning that future substantiated violations of the CSO Performance Standards, post orders, or Akal or USMD policies would result in additional disciplinary action, and a final warning that future

---

<sup>17</sup> In his written statement, Officer Schierman said he "believe[d] [Officer Ryan called the meeting] because as Union president he thought he had some type of authority to do this." Officer Exley testified that when he joined the Lopez Meeting, Officer Ryan said, "Being I'm the union president, I'll tell you what we were doing here, talking about Bill's performance issues." The evidence does not support a finding that Officer Ryan conducted the meeting as a union-authorized assembly.



substantiated incidents where it is determined that CSO Winther has engaged in actions that contribute to a hostile work environment would result in termination of employment.

5     Officer Ryan: ten-day suspension and a final warning that future substantiated violations of the CSO Performance Standards, post orders, or Akal or USMS policies would result in termination of employment. Specific Notification to be given that actions contributing to a hostile work environment will not be tolerated.<sup>18</sup>

10           By letter dated May 16, the USMS notified the Respondent that it did not concur with the Respondent's proposed discipline of Officers Winther and Ryan and stated:

15           [Officers Winther and Ryan] shall be immediately removed from performing under [the USMS Security Contract]...Please be aware that this action does not, in any way, prevent [Officers Winther and Ryan] from continued employment with Akal; it only prevents them from performing services under [the USMS Security Contract]...[Officers Winther and Ryan] shall relinquish all Government furnished property to the [USMS].

20     On the same date, USMS deputy marshals collected Officers Winther and Ryan's credentials and firearms, all of which had been furnished by the USMS.

25           By letters dated May 17, the Respondent informed Officers Winther and Ryan of the USMS decision, attaching to each letter a copy of the USMS' May 16 letter, and stated in pertinent part:

30           Akal Security, Inc. has received...communications from the U.S. Marshals Service dated May 16, 2007, indicating that they have ordered your permanent removal from the position of [CSO]. As Akal is under contract to the U.S. Marshals Service, we are required by contract to comply with the directives issued under the terms of that contract by removing you from the position of CSO. As a direct result of the Government's order of removal, your employment as a CSO with Akal Security is terminated effective May 16, 2007...Akal Security, Inc. would like to inform you that should you be interested in maintaining a position with Akal Security, Inc. on a different contract, please contact Justinder Singh Reilly. Please note that Akal currently does not have other options of employment in the Coeur d'Alene area and maintaining employment with Akal on a different contract will require that you relocate.<sup>19</sup>

40           C. Alleged Threats to Employees for Speaking with Agents of the NLRB

45           The Charging Party filed unfair labor practice charges alleging unlawful termination on June 7. Officer Scieszinski spoke to the CSOs about talking to the NLRB agent investigating the charges herein on the following occasions:

          June 26: While at work, Officer Scieszinski told Officer Exley that if he spoke to the NLRB agent he would be fired.

50

<sup>18</sup> The complaint does not allege that any of the proposed suspensions violates the Act.

<sup>19</sup> The Respondent's nearest non-USMS security contract operates in Seattle, Washington.

July 2: Officer Scieszinski called CSOs Exley, Guzman, Schierman, and Lopez together for a 30-minute employee meeting at Post 1. In the course of the meeting, Officer Scieszinski told the CSOs they were not to talk to the NLRB agent or they could be fired.

July 2: Following the employee meeting, Officer Scieszinski told Officer Exley that after Mr. Mathews contacted the NLRB agent, the Respondent would let employees know if they could say anything.

July 16: Officer Scieszinski again called CSOs Exley, Guzman, Schierman, and Lopez together for a 30-minute employee meeting at Post 1. In the course of the meeting, Officer Scieszinski told the CSOs the NLRB subpoenas they had received were worthless. He told the CSOs they could talk to the NLRB agent about the NLRB issues but could not divulge any operational information, post orders, or anything about security procedures, adding, "In other words, you really can't say anything."

On July 19, Mr. Mathews informed Officer Exley by telephone that Officer Scieszinski had given the CSOs bad information. Mr. Mathews assured Officer Exley he could talk to the NLRB agent about anything, as the company wanted to be open about the NLRB issues.

## V. Discussion

### A. Supervisory and/or Agency Status of Officer Scieszinski

Section 2(11) of the Act defines a supervisor as:

Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The General Counsel asserts Officer Scieszinski's supervisory status and bears the burden of proving it. See *Oakwood Healthcare, Inc.*, 348 NLRB No. 37 (2006); *Croft Metals, Inc.*, 348 NLRB No. 38 (2006); and *Golden Crest Healthcare Center*, 348 NLRB No. 39 (2006), which also addressed the meaning of terms "assign," "responsibly to direct," and "independent judgment," as used in Section 2(11) of the Act, under the framework of the Supreme Court's decision in *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001).

As lead CSO during the relevant period, Officer Scieszinski had no authority to discipline employees. Although Officer Scieszinski accepted an employment application from Officer Exley and later communicated to him an offer of employment, there is no clear evidence Officer

Scieszinski had authority to hire or to recommend the hire of employees.<sup>20</sup> Officer Scieszinski was the only on-site officer in charge of the Respondent's employees at the Courthouse. As such, he scheduled the CSOs' work shifts, assigning them to duty posts or moving them to specific locations in the Courthouse as the Courthouse activity schedules or unexpected incidents dictated, assigned overtime, granted/denied time off, and held employee meetings to discuss work issues. While most of Officer Scieszinski's duty post assignments appear to involve the performance of routine tasks and responsibilities, that fact "does not preclude the possibility that such regular assignments require the exercise of independent judgment." *Loyalhanna Care Center*, 352 NLRB No. 105 FN 4 (2008). Given the potential ramification of security assignments in a federal courthouse setting, particularly during "high profile" cases or criminal trials, the authority to make such assignments requires independent judgment. See *RCC Fabricators, Inc.*, 352 NLRB No. 88 (2008).

I find Officer Scieszinski possessed and exercised supervisory authority to assign CSOs to their daily posts and to significant duties and responsibilities as normal or exigent security demands required. The extent and complexity of his authority necessarily entailed independent judgment as to those assignments. *Ibid.* Accordingly, at all times relevant hereto, Officer Scieszinski was a supervisor with the meaning of Section 2(11) of the Act.

Counsel for the General Counsel asserts that irrespective of supervisory authority, Officer Scieszinski acted as the agent of the Respondent in actions relevant to this matter. The General Counsel bears the burden of proving the agency allegation. With regard to agency, Section 2(13) of the Act provides:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

The Board adopts the concept of apparent authority and applies the common law principles of agency when determining whether apparent authority is created: "Apparent authority results from a manifestation by the principal to a third party that creates a reasonable belief that the principal has authorized the alleged agent to perform the acts in question. Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that its conduct is likely to create such a belief. The Board's test for determining whether an employee is an agent of the employer is whether, under all of the circumstances, employees would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management." *Albertson's Inc.*, 344 NLRB 1172 (2005), citing *Pan-Osten Co.*, 336 NLRB 305, 305-306 (2001); *L.B. & B. Associates, Inc.*, 346 NLRB 1025 FN 17 (2006). Employees who regularly communicate management's directives to employees act as agents in furnishing employment-related information to employees in the course of his or her regular duties. *Pan-Osten*, supra.

As Lead CSO, Officer Scieszinski was generally the highest ranking officer at the

---

<sup>20</sup> Officer Scieszinski told Officer Exley that if he did not like an employment candidate, the candidate would not be employed at the Courthouse. If Officer Scieszinski's statement accurately reflected his employment veto power, it would establish his supervisory authority. See *Sheraton Universal Hotel*, 350 NLRB No. 84 at slip op. 6 (2007). However, without more direct evidence of such authority, I cannot find Officer Scieszinski could, in fact, positively or negatively influence hiring decisions.

Courthouse. Officer Scieszinski assigned CSO duties and communicated management decisions to the CSOs, holding periodic employee meetings to cover employment topics. As Respondent made Officer Scieszinski a “conduit of information to employees on their day-to-day duties,” Respondent placed him in a position where the CSOs could reasonably believe he spoke for management. *Mid-South Drywall Co., Inc.*, 339 NLRB 480, 480-481 (2003).<sup>21</sup> Accordingly, I find the General Counsel met his burden of proving the Respondent vested Officer Scieszinski with apparent authority to act as its agent at relevant times and his conduct at issue herein is attributable to the Respondent.

#### B. Terminations of Stephen G. Winther and Lee Matthew Ryan

Strictly speaking, the Respondent did not terminate Officers Winther and Ryan from employment with the Respondent. The USMS revocation of Officers Winther and Ryan’s credentials meant the Respondent could no longer employ the two CSOs at the Courthouse, but the Respondent did not terminate their employment opportunities at non-USMS locations. However, when Officers Winther and Ryan’s employment at the Courthouse ended, since the Respondent’s nearest non-USMS security contract was several hundred miles from Coeur d’Alene, continued employment with the Respondent was essentially unavailable to them. For convenience, I refer to the Respondent’s inability to employ Officers Winther and Ryan at the Courthouse as the Courthouse terminations. The Complaint does not allege that the Respondent’s investigation or proposed suspensions of Officers Winther and Ryan are unlawful; accordingly, I address only their Courthouse terminations.

No party disputes that Officers Winther and Ryan engaged in concerted activity when they organized and conducted the Lopez Meeting for the purpose of discussing with Officer Lopez his alleged performance shortcomings that assertedly impacted CSO safety. The question is whether their conduct was protected.

The General Counsel argues that Officers Winther and Ryan’s participation in the Lopez Meeting was protected by the Act and that the Respondent’s adverse action against them violates Section 8(a)(1) of the Act.<sup>22</sup> The General Counsel further argues that the Respondent improperly targeted Officers Winther and Ryan’s protected activity by its investigation of the Lopez Meeting and resultant recommended discipline. Since the USMS’ revocation of Officers Winther and Ryan’s credentials was based on the Respondent’s investigatory report and recommendation, the Respondent is ultimately responsible for the officers’ Courthouse terminations. Having no jurisdiction to require the USMS to rescind its revocation of Officers Winther and Ryan’s credentials, the General Counsel does not seek reinstatement for the two officers but asks that the Respondent be required to seek USMS restoration of Officers Winther and Ryan’s credentials and to make the two employees whole for lost wages and benefits.

The Respondent argues that Officers Winther and Ryan were not engaged in protected

---

<sup>21</sup> Mr. Mathews reinforced the appearance of Officer Scieszinski’s authority to speak for management when on July 19, he told Officer Exley that Officer Scieszinski had given the CSOs bad information, but failed to deny that Officer Scieszinski was authorized to give information.

<sup>22</sup> The General Counsel maintains that Officers Winther and Ryan’s supervisor, Officer Scieszinski, directed the two officers to speak to Officer Lopez regarding their concerns about his job performance, and “[t]hus, the meeting at issue was undertaken at [Officer] Scieszinski’s suggestion.” Impliedly, the General Counsel argues that Officer Scieszinski’s direction conferred protection on Officers Winther and Ryan’s participation. Since I have found that although Officer Scieszinski recommended the CSOs speak to Officer Lopez about their complaints, he did not authorize the Lopez Meeting, I do not address this argument.

activity by arranging and conducting the Lopez Meeting. The Respondent contends the two officers' pre-meeting failure to complain through official channels about Officer Lopez' job performance shows they were not addressing employee safety concerns but were conducting "a sort of hazing designed...to facilitate [Officer Lopez'] resignation or removal from the Courthouse...[which] arguably constituted harassment of a fellow employee."

Counsel for the General Counsel asks me to apply the analysis prescribed by *Wright Line*<sup>23</sup> to determine whether the Courthouse terminations of Officers Winther and Ryan violate the Act. The *Wright Line* analysis is appropriately used in cases that turn on motive. Here the existence or lack of unlawful animus is not relevant as the Respondent's adverse employment actions against Officers Winther and Ryan were admittedly motivated by the two officers' involvement in the Lopez Meeting. See *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21 (1964); *CGLM, Inc.*, 350 NLRB No. 77, FN2 (2007); *Phoenix Transit System*, 337 NLRB 510, 510 (2002); *Shamrock Foods Co.*, 337 NLRB 915 (2002). An employer independently violates Section 8(a)(1) of the Act if, "having knowledge of an employee's activity, it takes adverse employment action that is 'motivated by the employee's protected concerted activity.'" *CGLM, Inc.*, at slip op. 6, quoting *Meyer Industries*, 268 NLRB 493, 497 (1984). Therefore, the *Wright Line* analysis is not appropriate here.

Under the legal framework of *Burnup & Sims*, Supra, the General Counsel must establish that the disciplined employees engaged in protected activity, that the employer was aware of said activity,<sup>24</sup> that the basis for the adverse employment actions was an alleged act of misconduct arising in the course of the activity, and that the employees were not guilty of the alleged misconduct.

The Respondent admits that it initially proposed to suspend Officers Winther and Ryan, and later implemented the USMS' revocation of their credentials, because the two officers planned and conducted the Lopez Meeting. The Respondent's censure of the Lopez meeting falls, essentially, into two categories: (1) Officers Winther and Ryan allegedly created a hostile work environment by their unauthorized critique of Officer Lopez' job performance and their correlative failure to follow chain of command in reporting rules violations rather than addressing Officer Lopez directly; and (2) Officers Winther and Ryan conducted the Lopez meeting during courthouse operational hours, resulting in a breakdown of security procedures when security posts were left unmanned. Since the Act's protections may not apply uniformly to the two categories, it is necessary to determine, if possible, which category was the critical basis for the discipline imposed on Officers Winther and Ryan.

The evidence warrants a finding that Officers Winther and Ryan would not have been terminated from their courthouse positions but for their meeting with Officer Lopez to express their dissatisfaction with his job performance. The Respondent's May 2 Investigation Report focuses on Officers Winther and Ryan having allegedly created a hostile work environment by holding the Lopez Meeting, and, in its post-hearing brief, the Respondent notes that specific conduct as the dominant basis for its proposed discipline: "Primarily, Mathews determined that Ryan, Winther, and Schierman had violated Performance Standard 17 by creating a hostile work environment." Further, the Respondent did not terminate Officers Schierman, Exley, or

<sup>23</sup> 251 NLRB 1083 (1980) enf'd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

<sup>24</sup> It is not necessary for the General Counsel to show that the Respondent knew Officers Winther and Ryan's conduct was protected, as evidence of employer knowledge is not a necessary element of an 8(a)(1) violation. See *Meijer, Inc.*, 344 NLRB 916 (2005).

Lopez although all three were, by the Respondent's definition, absent from their duty posts during the Lopez Meeting. The evidence as a whole therefore supports a finding that Officers Winther and Ryan would have been disciplined for their roles in the Lopez Meeting regardless of whether they violated work rules by deserting their posts and neglecting their duties during the meeting. Since the *sine qua non* of Officers Winther and Ryan's Courthouse terminations is their February confrontation of Officer Lopez, the issue is whether the confrontation is protected by the Act. See *Valley Hospital Medical Center, Inc.*, 351 NLRB No. 88 FN 5 (2007). It is unnecessary to resolve whether Officers Winther and Ryan's alleged inattention to security post assignments during the Lopez Meeting was unprotected by the Act.<sup>25</sup>

Section 7 of the Act provides, in pertinent part, that "[e]mployees shall have the right to ... engage in...concerted activities for the purpose of collective bargaining or other mutual aid or protection ...." The protection afforded by Section 7 extends to employee efforts to improve terms and conditions of employment or otherwise improve their lot as employees. No one disputes that the health and safety of employees are significant terms and conditions of employment. See *American National Can Co.*, 293 NLRB 901, 904 (1989). It follows that when the CSOs discussed among themselves and with Officer Scieszinski safety problems allegedly created by Officer Lopez, Section 7 protected their discussions. The question is whether their communications continued to be protected when they presented their criticisms directly to Officer Lopez at the Lopez Meeting.

In *NLRB v. Robertson Industries*, 560 F.2d 396, 398 (9th Cir. 1976),<sup>26</sup> the court stated that for concerted activity to be protected, the activity: (1) must involve a work-related complaint or grievance; (2) the activity must further some group interest; (3) a specific remedy or result must be sought through the activity; and (4) the activity must not be unlawful or otherwise improper. The first three factors specified by the court are clearly present in the arrangement and conduct of the Lopez Meeting: (1) Officers Winther and Ryan organized, and Officers Winther, Ryan, Schierman, and Exley attended, the Lopez Meeting to address their work-related concern that Officer Lopez' job performance presented a security risk to all CSOs; (2) the presentation of coworker concerns to Officer Lopez furthered the valid group interest in safety; and (3) the CSOs hoped the confrontation would motivate Officer Lopez to change his allegedly dangerous work habits. The remaining question is whether the Lopez meeting and Officers Winther and Ryan's participation in it, was, in itself, unlawful or otherwise improper.

---

<sup>25</sup> It is unclear that Officers Winther and Ryan were impermissibly absent from their posts during the Lopez Meeting. Officer Ryan was assigned to Post 1 where the meeting was held, while Officer Winther was assigned to a rover position, which, arguably, could legitimately put him at the Post 1 area. The meeting was held in the windowed control room at Post 1 from which the entrance to the Courthouse could be monitored and where management meetings with CSOs were customarily held. The Respondent bears the burden of proving misconduct. The Respondent has adduced no evidence that it prohibited CSOs from interacting with one another while on duty, particularly in the absence of courthouse visitors as was the case the morning of the Lopez Meeting, or that it considered even extended CSO interaction while on duty to be misconduct. Strict adherence to post assignment does not appear to have been a security absolute for the Respondent; as needed, Officer Scieszinski gathered CSOs to Post 1 to discuss work issues and disseminate employment information. The General Counsel does not raise, and I do not consider, any theory that the period during which the Lopez Meeting occurred constituted a protected work stoppage as contemplated by *NLRB v. Washington Aluminum Co.*, 370 U.S. 9 (1962).

<sup>26</sup> Cited with approval by the Board in *Northeast Beverage Corporation*, 349 NLRB No. 110 FN9 (2007).

Counsel for the General Counsel cites *Jhirmack Enterprises*, 283 NLRB 609, FN 2 (1987) for the proposition that an employee engages in protected, concerted activity when he or she advises a coworker of complaints about his job performance when the performance affects others' terms and conditions of employment. In *Jhirmack*, the Board concluded an alleged discriminatee engaged in protected concerted activity when, motivated by a desire to protect a fellow employee's employment, she advised a coworker that other employees had complained to management about his slow job performance, which performance affected certain of their employment conditions. *Jhirmack* establishes that an employee is protected by the Act in advising a coworker of job performance problems that affect other workers.<sup>27</sup> See also *Cadbury Beverages, Inc.*, 324 NLRB 1213 (1997), enfd. *Cadbury Beverages, Inc. v. N.L.R.B.*, 333 U.S.App.D.C. 94, (D.C.Cir. 1998).

The Respondent argues that Officers Winther and Ryan's conduct was unprotected as (1) it violated explicit contractual prohibitions; (2) the officers were not motivated by any valid, work-related concern; (3) the Lopez Meeting was a manifestation of malicious hazing and harassment of Officer Lopez, and (4) the officers' conduct had the improper design of effecting Officer Lopez's removal from the Courthouse.

The Respondent contends that Officers Winther and Ryan improperly failed to utilize internal complaint or union grievance procedures to address their safety issues with Officer Lopez's work. I have found that the officers did, in fact, raise their safety concerns with Officer Scieszinski without resolution, but even if they had not, employees engaged in protected activity generally do not lose the protection of the Act simply because their activity contravenes an employer's rules or policies. "[A]n employer may not interfere with an employee's right to engage in Section 7 activity by requiring that the employee take all work-related concerns through a specific internal process." *Valley Hospital Medical Center, Inc.*, *supra* at slip op 7 (2007) and cases cited therein.<sup>28</sup> As to the Respondent's argument that Officers Winther and Ryan were improperly motivated in addressing safety complaints to Officer Lopez, there is no evidence of malice or other inappropriate motivation. The evidence demonstrates that Officers Winther, Ryan, Schierman, and Exley were concerned about perceived safety blunders

---

<sup>27</sup> *Jhirmack* does not answer whether the General Counsel must show a benign and helpful motive for the communication or simply disprove employee misconduct in the delivery of it. Two of the Board's panel members in *Jhirmack* found the conduct was undertaken for the mutual aid and protection of a fellow employee, noting that the employee complaints were prompted by employees' concern that poor job performance adversely affected their employment terms and that the alleged discriminatee's purpose in relaying the complaints was to encourage her coworker to take corrective action to protect his job. The concurring Board member addressed the employer's good-faith belief that the alleged discriminatee had engaged in misconduct by, in part, deliberately inflicting emotional harm on her coworker, but concluded the General Counsel had proven the alleged discriminatee had not, in fact, engaged in misconduct.

<sup>28</sup> Moreover, Officer Scieszinski suggested the CSOs approach Officer Lopez directly with their complaints, and the Respondent cannot now justifiably complain they did so.

endangering them all.<sup>29</sup> There is no evidence any CSO bore personal animosity toward Officer Lopez. The fact that Officer Ryan may have desired Officer Lopez' removal if Officer Lopez did not correct his alleged safety violations, does not show an improper motive.<sup>30</sup>

5 Finally, the Respondent argues the Lopez Meeting was unprotected as an act of harassment of Officer Lopez. The Board has found that even when an employee is engaged in protected activity, he or she may lose the protection of the Act by egregious behavior, including displaying "an opprobrious or abusive manner." *Verizon Wireless*, 349 NLRB No. 62, slip op. 10 (2007). Here, although Officers Winther, Ryan, Schierman, and Exley may have presented  
10 some unpalatable criticisms to Officer Lopez, there is no evidence their opinions were delivered in other than a civil and temperate manner. Although Officer Lopez complained in his written statement to the Respondent that he was "talked down to and basically scolded [making him] feel harassed and mistreated...and treated like a second class citizen," he pointed to no  
15 offensive, intimidating, or threatening behavior by the CSOs and agreed that Officer Ryan said the object of the meeting was help him. Following the meeting, Officer Lopez thanked the CSOs for their advice, which further weakens a harassment accusation. Although an employer has a valid interest in protecting its employees from coworker persecution, "[l]egitimate managerial concerns to prevent harassment do not justify...discipline on the basis of the subjective reactions of others to [employees'] protected activity." *Consolidated Diesel Co.*, 332  
20 NLRB 1019, 1020 (2000). Accordingly, Officers Winther and Ryan's organization and conduct of the Lopez Meeting did not lose the Act's protection because of Officer Lopez' subjective reaction to the meeting.

25 The General Counsel has established that Officers Winther and Ryan engaged in protected activity when they effected the Lopez Meeting. The evidence further shows that neither officer engaged in any misconduct that removed their activities from the protections of the Act. It follows that adverse employment consequences based on Officers Winther and Ryan's protected activity, even though grounded on a good faith albeit mistaken belief that they engaged in misconduct in the course of their protected activity, violates Section 8(a)(1) of the  
30 Act. See *NLRB v. Burnup & Sims*, supra. The next question is whether the Respondent can be held responsible for the adverse employment consequences, i.e. the Courthouse terminations, to Officers Winther and Ryan.

35 In the Courthouse terminations of Officers Winther and Ryan, the Respondent was the nonacting entity. The USMS, over which the Board has no jurisdiction, prohibited Officers Winther and Ryan's continued employment at the Courthouse by revoking their credentials. The Board has considered the obligations of nonacting employers in fashioning remedies for violations of the Act. In *Federal Security, Inc.*,<sup>31</sup> the employer of security guards provided to the Chicago Housing Authority (CHA),<sup>32</sup> misinformed the CHA as to the nature of a walkout by the  
40 guards, with the result that participants were barred from working at the CHA properties. The

<sup>29</sup> It is irrelevant that the Respondent did not, apparently, concur with the officers' perception of Officer Lopez' job performance. Protected activity does not depend upon the merit or lack of merit of the grievance. *Skrl Die Casting, Inc.*, 222 NLRB 85, 89 (1976).

45 <sup>30</sup> The situation is analogous to cases in which employees seek the removal of a supervisor. When the supervisor's capability has a direct impact on the employees' own job interests and the protest is motivated by legitimate employee concerns, it is protected. See *Trompler, Inc.*, 335 NLRB 478, 479 (2001), which cites, inter alia, *NLRB v. Leslie Metal Arts Co.*, 509 F.2d 811 (6th Cir. 1975).

50 <sup>31</sup> 318 NLRB 413 (1995), enf. denied *N.L.R.B. v. Federal Sec., Inc.*, 154 F.3d 751 (7th Cir. 1998) (the court found the walkout by security guards unprotected.)

<sup>32</sup> CHA was a governmental entity over which the Board had no jurisdiction.



Board found that since the employer's erroneous report to the CHA led the CHA to bar certain of the security guards from employment, the employer "must bear the burden of fully remedying, so far as possible, its unlawful conduct by attempting to have these names removed from the bar list, in furtherance of its reinstatement obligation." Further, the employer would be required to make whole the affected security guards, irrespective of whether the CHA granted permission for their deployment on CHA properties. The present case is analogous to *Federal Security*. By its May 2 investigative report to the USMS, the Respondent informed the USMS that Officers Winther and Ryan had (1) "engaged in a prohibited activity, an unauthorized meeting to critique the job performance of [Officer Lopez], thereby creating a hostile work place" in violation of Performance Standard #17; (2) harassed Officer Lopez in the work place; and (3) while subjecting Officer Lopez to a "hostile work place," created "a complete breakdown of security." The Respondent's characterization of Officers Winther and Ryan's conduct as "prohibited activity" that "creat[ed] a hostile work place" and caused "a complete breakdown of security" was inaccurate. The Respondent thereby misinformed the USMS of the nature of Officers Winther and Ryan's conduct. In the absence of evidence to the contrary, it is reasonable to infer that the USMS based its revocation of Officers Winther and Ryan's credentials on the misinformation supplied by the Respondent.

The Board has noted that a successful request for termination of an employee for discriminatory reasons violates the Act even if made by an entity other than an employee's employer. Further, an employing entity acquiescing in a discriminatory termination request is guilty of an unfair labor practice if it is aware of the motive behind the request. See *Capitol EMI Music*, 311 NLRB 997 FN 22 (1993), enfd 23 F3d 399 (4<sup>th</sup> Cir. 1994), citing *Flav-O-Rich*, 309 NLRB 262, 265-266 (1992). Here the Respondent itself supplied the USMS with an unlawful motive to revoke Officers Winther and Ryan's credentials, and there is no evidence the Respondent resisted the credential revocations in any way. Accordingly, the Respondent is responsible for the adverse employment consequences flowing from its investigative report to the USMS and for remedying the unlawful employment actions taken against Officers Winther and Ryan in violation of Section 8(a)(1) of the Act.

### C. Alleged Threats to Employees for Speaking with Agents of the NLRB

After the Charging Party filed unfair labor practice charges against the Respondent on June 7, Officer Scieszinski threatened the following employees as follows:

On June 26, told Officer Exley that if he spoke to the NLRB agent he would be fired.

On July 2, told Officers Exley, Guzman, Schierman, and Lopez they were not to talk to the NLRB agent or they could be fired and told Officer Exley that the Respondent would thereafter let employees know if they could say anything.

On July 16, told Officers Exley, Guzman, Schierman, and Lopez that the NLRB subpoenas they had received were worthless and that although the CSOs could talk to the NLRB agent, they could not divulge any operational information, post orders, or anything about security procedures, adding, "In other words, you really can't say anything."

As a supervisor and/or agent of the Respondent, Officer Scieszinski's statements constitute threats, both explicit and implied, to employees and restrain and coerce employees in the exercise of their rights under the Act. See *Management Consulting, Inc.*, 349 NLRB No. 27, slip op. 1-2 (2007) and cases cited therein.

The Respondent contends that Officer Scieszinski's statements were immediately and effectively repudiated by Mr. Mathews when, on July 19, Mr. Mathews told Officer Exley he could talk to the Board agent about anything, as the company wanted to be open about the NLRB issues. Mr. Mathews' statement, addressed as it was only to Officer Exley, did not adequately publish a repudiation of Officer Scieszinski's threats to the CSOs and did not clearly reflect assurances that the Respondent would not thereafter interfere with the CSOs' exercise of Section 7 rights. See *Sam's Club*, 322 NLRB 8, 9 (1996), citing *Passavant Memorial Area Hospital*, 237 NLRB 138, 138-139 (1978). Accordingly, by Officer Scieszinski's statements detailed above, the Respondent violated Section 8(a)(1) of the Act.

### Conclusions of Law

1. Akal Security, Inc. (the Respondent) is and has been at all times material an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The United Government Security Officers of America, Local 118 (the Union) is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by
  - (a) Terminating employees Lee Ryan and Stephen Winther from their positions at the United States District Court for Idaho located in Coeur d' Alene, Idaho because they engaged in protected concerted activity and/or to discourage other employees from engaging in protected concerted activity.
  - (b) Threatening employees with discharge or discipline if they spoke to an agent of the National Labor Relations Board and by directing employees not to speak to anyone regarding discharges of employees.
4. The unfair labor practices set forth above affect commerce within the meaning of Sections 8(a)(1) and Sections 2(6) and (7) of the Act.

### Remedy

Having found that Respondent has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The conclusion that the Respondent violated Section 8(a)(1) of the Act by terminating Officers Winther and Ryan from their CSO positions requires remedial action by the Respondent, the normal provisions for which would include reinstatement and backpay. Here, the Respondent need not offer Officers Winther and Ryan reinstatement to their general employment with the Respondent, as the Respondent never terminated them from that employment. Meaningful reinstatement, however, means that Officers Winther and Ryan must be returned to their former positions at the Courthouse, which the Respondent cannot do unless the USMS rescinds its revocation of the officers' credentials. Inasmuch as the USMS is not a charged party and as the Board has no jurisdiction over the USMS in any event, no Board order can avail against the USMS. It does not follow, however, that Officers Winther and Ryan must suffer the consequences of the Act's violation without remedy.

The General Counsel proposes, in pertinent part, the following remedy: (1) Respondent be required to seek USMS restoration of Officers Winther and Ryan's credentials; (2) Respondent make Officers Winther and Ryan whole for all lost wages and benefits from the time of their Courthouse terminations until reinstatement, or, if the USMS bars reinstatement, then until they obtain substantially equivalent employment elsewhere; and (3) remove from its files and records any reference to Officers Winther and Ryan's Courthouse terminations. Only the General Counsel's second proposal requires further discussion. If, in response to

application by the Respondent, the USMS should refuse to restore Officers Winther and Ryan's credentials, the proposed make-whole remedy may require the Respondent to pay Officers Winther and Ryan indefinitely the earnings they would have had but for the Respondent's unfair labor practices. Nevertheless, the Board has ordered just such a remedy in a similar situation. See *Federal Security, Inc.* at 414 and FN 4, and the Respondent has offered no persuasive argument why that remedy should not attach here.<sup>33</sup>

Accordingly, the Respondent, having unlawfully terminated Officers Winther and Ryan from their positions of employment at the United States District Court for Idaho located in Coeur d' Alene, Idaho must seek restoration by the United States Marshals Service of Officers Winther and Ryan's security credentials and, if successful, offer Officers Winther and Ryan immediate and full reinstatement to their positions of employment at the Courthouse, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges that would exist but for its unlawful actions and make them whole for any loss of earnings and other benefits, computed from the date of termination from their positions of employment at the Courthouse to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971) plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>34</sup>

### ORDER

The Respondent, Akal Security, Inc., its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

- (a) Terminating any employee from any assigned position because the employee engaged in protected concerted activity and/or to discourage other employees from engaging in protected concerted activity.
- (b) Threatening any employee with discharge or discipline if the employee speaks to an agent of the National Labor Relations Board.
- (c) Directing any employee not to speak to others regarding discharges of employees.
- (d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

#### 2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Within 14 days from the date of this Order, seek restoration by the United States Marshals Service of Lee Ryan and Steven Winther's security credentials and, if successful, offer Officers Winther and Ryan immediate and full reinstatement to their positions of employment at the United States District Court for Idaho located

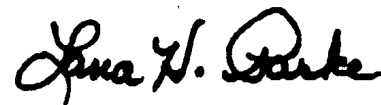
<sup>33</sup> The Respondent has provided no authority for its contention that any remedy should be limited in accordance with the parties' bargaining agreement and *H.K. Porter Company, Inc. v. NLRB*, 397 U.S. 99 (1970).

<sup>34</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

in Coeur d' Alene, Idaho, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges that would exist but for its unlawful actions.

- (b) Make Lee Ryan and Steven Winther whole, with interest, for any loss of earnings or benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.
- (c) Remove from its files any reference to the unlawful terminations of Lee Ryan and Steven Winther from the United States District Court for Idaho located in Coeur d' Alene, Idaho and thereafter notify them in writing that this has been done and that the unlawful actions will not be used against them in any way.
- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (e) Within 14 days after service by the Region, post at its facilities in Coeur d' Alene and Boise, Idaho copies of the attached notice marked "Appendix."<sup>35</sup> Copies of the notice, on forms provided by the Regional Director for Region 19 after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since May 16, 2007.
- (f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated:



Lana H. Parke  
Administrative Law Judge

---

<sup>35</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX  
**NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

**WE WILL NOT** do anything that interferes with these rights. More particularly,  
**WE WILL NOT** terminate any employee because the employee engaged in protected concerted activity and/or to discourage other employees from engaging in protected concerted activity.  
**WE WILL NOT** threaten any employee with discharge or discipline if the employee speaks to an agent of the National Labor Relations Board.

**WE WILL NOT** tell any employee not to speak to others about discharges of employees.

**WE WILL NOT** In any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights listed above.

**WE WILL** seek to have the United States Marshals Service restore Lee Ryan and Steven Winther's security credentials and, if successful, offer Lee Ryan and Steven Winther immediate and full reinstatement to their positions of employment at the United States District Court for Idaho located in Coeur d' Alene, Idaho, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges that would exist but for our unlawful actions.

**WE WILL** make Lee Ryan and Steven Winther whole, with interest, for any loss of earnings or benefits suffered as a result of our unlawful actions.

**WE WILL** remove from our files any reference to our unlawful terminations of Lee Ryan and Steven Winther from their positions of employment at the United States District Court for Idaho located in Coeur d' Alene, Idaho, and **WE WILL**, within 3 days thereafter, notify them in writing that this has been done and that the terminations will not be used against them in any way.

Akal Security, Inc.,

(Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

915 2nd Avenue, Federal Building, Room 2948

Seattle, Washington 98174-1078

Hours: 8:15 a.m. to 4:45 p.m.

206-220-6300.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, 206-220-6284.